

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

FACILITY GUIDELINES  
INSTITUTE, INC.,

Plaintiff,

v.

UPCODES, INC.,

Defendant.

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Case No.:

**DECLARATION OF LINDSEY M. BRUNO**

I, Lindsey M. Bruno, declare as follows:

1. My name is Lindsey M. Bruno. I am an attorney with the law firm of Lewis Rice LLC and counsel of record for Plaintiff Facility Guidelines Institute, Inc. (“FGI”) in the above-captioned matter. I am a member in good standing of the State Bars of Missouri and Illinois.

2. I make this declaration in support of FGI’s Motion for Preliminary Injunction in the above-captioned matter. I have personal knowledge of the facts set forth below, and, if called upon as a witness, I could and would testify to such facts under oath.

3. I have reviewed the website operated by Defendant UpCodes, Inc. at <https://up.codes> (the “UpCodes Website”).

4. A true and accurate copy of a webpage from the UpCodes Website listing the codes available for review and download is attached hereto as Exhibit E and is available at <https://up.codes/codes/general> (last visited December 5, 2022). This webpage lists FGI “Guidelines for Design and Construction of Hospitals 2018”, FGI “Guidelines for Design and

Construction of Outpatient Facilities 2018”, and FGI “Guidelines for Design and Construction of Residential Health, Care, and Support Facilities 2018”. *See* page 5 of 5.

5. A true and accurate copy of a webpage from the UpCodes Website listing the FGI “Guidelines for Design and Construction of Hospitals 2018” is attached hereto as Exhibit F and is available at <https://up.codes/viewer/michigan/fgi-hospitals-2018> (last visited December 5, 2022). Individual sections of the FGI “Guidelines for Design and Construction of Hospitals 2018” are available for viewing on the UpCodes Website. *See, e.g.*, <https://up.codes/viewer/michigan/fgi-hospitals-2018/chapter/1.1/introduction#1.1> (last visited December 5, 2022), attached hereto Exhibit G.

6. A true and accurate copy of a webpage from the UpCodes Website listing the FGI “Guidelines for Design and Construction of Outpatient Facilities 2018” is attached hereto as Exhibit H and is available at <https://up.codes/viewer/nebraska/fgi-outpatient-facilities-2018> (last visited December 5, 2022). Individual sections of the FGI “Guidelines for Design and Construction of Outpatient Facilities 2018” are available for viewing on the UpCodes Website. *See, e.g.*, <https://up.codes/viewer/nebraska/fgi-outpatient-facilities-2018/chapter/1.1/introduction#1.1> (last visited December 5, 2022), attached hereto Exhibit I.

7. A true and accurate copy of a webpage from the UpCodes Website listing the FGI “Guidelines for Design and Construction of Residential Health, Care, and Support Facilities 2018” is attached hereto as Exhibit J and is available at <https://up.codes/viewer/tennessee/fgi-residential-facilities-2018> (last visited December 5, 2022). Individual sections of the FGI “Guidelines for Design and Construction of Residential Health, Care, and Support Facilities 2018” are available for viewing on the UpCodes Website. *See, e.g.*, <https://up.codes/viewer/tennessee/fgi-residential-facilities-2018>

[facilities-2018/chapter/1.1/introduction#1.1](#) (last visited December 5, 2022), attached hereto Exhibit K.

8. In addition to displaying the 2018 FGI Guidelines on the UpCodes Website, UpCodes offers a “code compliance platform” with additional “premium” features at various pricing. According to the UpCodes Website, the paid version includes various reference, research, and collaboration tools, notable among them being a search function, code updates, local document styling, and code diagrams. *See, e.g.,* <https://up.codes/pricing> (last visited December 5, 2022), attached hereto as Exhibit L.

9. The top of the UpCodes Website constantly displays a “Contact Sales” banner to encourage visitors to sign up for the paid UpCodes services, as seen here:



*See, e.g., id.*

10. When a visitor clicks into the free section of the UpCodes Website, UpCodes displays a solicitation to start a free two-week trial of the paid UpCodes Premium service and to contact UpCodes’ sales team, as seen here:

## 1.1 Introduction

*Appendix material, shown in shaded boxes at the bottom of the page, is advisory only.*

### 1.1-1 General

#### \*1.1-1.1 Application

The provisions of this chapter shall apply to all new construction and major renovation projects in hospitals.

**A1.1-1.1 Application.** This document covers hospitals common to communities in the United States. Specialty hospitals with unique services will require special consideration. However, sections herein may be applicable for parts of any facility and may be used where appropriate.

#### \*1.1-1.2 Minimum Standards for New Facilities and Major Renovations

**A1.1-1.2 Performance vs. prescriptive standards.** The minimum standards in the *Guidelines* have been established to obtain a desired performance result. Prescriptive limitations (such as exact minimum dimensions or quantities), when given, describe a condition that is commonly recognized as a practical standard for normal operation. For example, reference to a room or area by the patient, equipment, or staff activity that identifies its use avoids the need for complex descriptions of procedures for appropriate functional programming.

##### 1.1-1.2.1

Each chapter in this document contains information intended as minimum standards for design and construction of new hospitals and major renovations of existing hospitals.

##### \*1.1-1.2.2

Standards set forth in the *Guidelines* shall be considered minimum and do not prohibit designing facilities and systems that exceed these requirements.



### Streamline code research

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See, e.g., Exhibit G (available at <https://up.codes/viewer/michigan/fgi-hospitals-2018/chapter/1.1/introduction#1.1>).


11. A true and correct copy of a webpage from the UpCodes Website titled “Our Fight to Keep the Law Free” is attached as Exhibit M and is available at <https://up.codes/free-law> (last visited December 5, 2022).

12. Attached as Exhibit N is a true and correct copy of the UpCodes Terms of Service, available at <https://up.codes/tos> (last visited December 5, 2022).

13. According to an article published by TechCrunch, UpCodes had received over \$4 million in venture capital funding as of March 15, 2021. See <https://techcrunch.com/2021/03/15/building-code-compliance-startup-upcodes-gets-3-36m-in-pre-series-a-funding/> (last visited December 5, 2022), attached hereto as Exhibit O.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct as I verily believe.

Executed on December 5, 2022.

  
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Lindsey M. Bruno